

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JETZ MIDWEST, Inc.,	)	
	)	
Plaintiff,	)	4:09CV3000
	)	
v.	)	
	)	
KAPLAN HIGHER EDUCATION	)	MEMORANDUM AND ORDER
CORPORATION,	)	
	)	
Defendant.	)	

On July 1, 2009, the plaintiff filed a motion to compel responses to interrogatories and requests for production served on the defendant on April 17, 2009, and to recover its costs and attorney fees incurred in filing the motion. Filing No. [26](#). The plaintiff's motion states the defendant had, as of July 1, 2009, provided no response to plaintiff's written discovery. Plaintiff's counsel filed an affidavit in support of his request for attorney fees on July 8, 2009. Filing No. [30](#).

The defendant filed a notice of service on July 17, 2009 stating that on that date, it served unverified Answers to Plaintiff's First Set of Interrogatories, and responses to Plaintiff's First Set of Requests for Production of Documents. Filing No. [31](#). The defendant did not respond to plaintiff's motion to compel and request for sanctions. Based on the record before the court, there was no substantial justification for defendant's failure to respond to plaintiff's written discovery prior to the plaintiff's filing of a motion to compel. Accordingly,

IT IS ORDERED:

- 1) On or before August 3, 2009, and if defendant's responses to plaintiff's written discovery are incomplete or the interrogatory answers remain unverified as of that date, the plaintiff shall file a supplemental motion to compel. Absent such a motion, the court will deem the discovery issues raised by plaintiff's motion to compel resolved.
- 2) On or before August 3, 2009, the defendant shall file its response to the plaintiff's request for attorney fees and expenses and supporting evidence. No reply shall be filed absent leave of the court for good cause shown.

DATED this 23<sup>rd</sup> day of July, 2009.

BY THE COURT:

*Richard G. Kopf*

United States District Judge